

IN THE CASE OF: ██████████

BOARD DATE: 20 March 2024

DOCKET NUMBER: AR20230008420

APPLICANT REQUESTS:

- upgrade of his characterization of service from under other than honorable conditions (UOTHC) to honorable
- change of narrative reason for separation to an appropriate less derogatory reason, such as Secretarial Authority

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record), 12 May 2023
- Legal Brief
  
- Exhibit 1 – DD Form 214 (Certificate of Release or Discharge from Active Duty), 29 January 1992
- Exhibit 2 – DD Form 214, 5 January 1996
- Exhibit 3 – medical report, 10 February 1995
- Exhibit 4 – DD Form 458 (Charge Sheet), 20 December 1995
- Exhibit 5 – applicant's request for discharge, date unknown
- Exhibit 6 – immediate commanders recommendation, 4 January 1996
- Exhibit 7 – separation authority approval, 9 January 1996
- Exhibit 8 – Orders 017-82, 17 January 1996
- Exhibit 9 – Army Discharge Review Board (ADRB) case, AR2009006397, 2 December 2009
- Exhibit 10 – Army Board for Correction of Military Records (ABCMR) case, AR 20110014152, 26 January 2012
- Exhibit 11 – ABCMR case, AR20140014220, 21 March 2015
- Exhibit 12 – applicant's statement of facts, 9 January 2023
- Exhibit 13 – Department of Veterans Affairs (VA), rating decision, 26 March 2006
- Exhibit 14 – patient chart, 3 January 2023
- Exhibit 15 – brochure for Deacon Conference, 5 June 2015
- Exhibit 16 – Phi Theta Kappa Honor Society recommendation, 19 May 2017

- Exhibit 17 – Phi Theta Kappa Honor Society member certificate, 6 March 2013
- Exhibit 18 – certificate of ordination, 27 July 2009
- Exhibit 19 – license to preach certificate, 27 July 2009
- Exhibit 20 – certificate of marriage officiant registration, 28 July 2009
- Exhibit 21 – non-profit church registration, 10 January 2011
- Exhibit 22 – certificate of registration, 18 December 2020
- Exhibit 23 – multicultural studies brochure, date unknown

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's cases by the Army Board for Correction of Military Records (ABCMR) in Dockets Number AR20110014152 and AR20140014220 on 26 January 2012 and 31 March 2015, respectively.

2. The applicant refers to attached briefs and exhibits presented by her counsel. She references post-traumatic stress disorder (PTSD), and other mental health are related to her request.

a. The applicant's counsel provides a 6- page legal brief, which is available in entirety for the Board's review, within the supporting documents. The following is a summary of the legal brief:

b. Counsel briefly addresses the applicant's service in the earliest parts of her enlistment, to include referencing the applicant's first time of being absent without leave (AWOL), referencing the applicant's spouse had informed her of his positive human immunodeficiency virus (HIV) diagnosis and she reacted by binge drinking and attempting suicide, adding this attempt was not reported. She was diagnosed with adjustment disorder due to conduct and anxiety with a secondary diagnosis of borderline traits.

c. Counsel addresses the applicant's second AWOL offense, stating she went AWOL on 29 June 1995 and remained AWOL until she surrendered herself on 17 December 1995. Counsel references her violations of the Uniform Code of Military Justice (UCMJ), and her separation request to include her personal statements of going AWOL due to her distraught mental state at the time.

d. Counsel argues the applicant had conditions which may excuse or mitigate her discharge, it did occur during military service, it does excuse or mitigate her other than honorable discharge and her condition and experience outweighs the discharge.

e. Counsel notes the applicant's misconduct was caused by her distraught mental state, stating she was suffering from significant behavioral health issues at the time of her AWOL, referencing her attempt of suicide because of her ex-husbands positive HIV diagnosis, stating the chain of command was well aware of the attempted suicide and never reported it.

f. Counsel notes since her discharge, has found success in the civilian world, by earning her associate degree, becoming a member of Phi Theta Kappa Honor Society, earned her ordination, license to preach and marriage officiant certificates, wrote a play, registered her ministry, and served in her communities as a religious leader. The applicant is haunted by her separation from the Army.

3. Having had service in the Army National Guard (ARNG), the applicant enlisted in the Regular Army on 31 January 1994, for a 3-year period. She subsequently extended on 7 February 1994, for an additional one month to meet the service remaining requirement for an overseas tour.

4. On 10 February 1995, the applicant was admitted to the Tripler Emergency Room for status post suicide attempt. The Narrative Summary indicates she was brought to the emergency room by command after being AWOL from duties for two days. She reported receiving troubling news from her ex-husband that he was HIV positive. Her reaction to this news was to go on a drinking binge and attempting suicide by overdosing Tylenol and Motrin, over the weekend. She was diagnosed with adjustment disorder due to conduct and anxiety and borderline traits. She was discharged from the hospital on 15 February 1995.

5. The applicant was reported as AWOL from 12 June 1995 to 18 June 1995. A DD Form 553 (Deserter/Absentee Wanted by the Armed Forces) shows the applicant was absent on 29 June 1995.

6. A DD Form 616 (Report of Return of Absentee) shows the applicant surrendered to military control on 17 December 1995.

7. Court-martial charges were preferred against the applicant for violations of the UCMJ. The relevant DD Form 458 (Charge Sheet), dated 20 December 1995, shows she was charged with two specifications of absenting herself without leave from on or about 12 June 1995 until on or about 17 June 1995, and from on or about 29 June 1995 until on or about 17 December 1995.

8. The applicant consulted with legal counsel and executed a written request for discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10 (Discharge in Lieu of

Trial by Court-Martial). She acknowledged her understanding of the following in her request:

a. She understood that she could request discharge for the good of the service because the charges preferred against her could result in the imposition of a punitive discharge.

b. Prior to completing this request, she was afforded the opportunity to consult with appointed counsel, who fully advised her of the basis for her contemplated trial by court-martial, the maximum punishment authorized under the UCMJ, of the possible effects of an under other than honorable conditions character of service, and of the procedures and rights available to her.

c. She acknowledged that she was making this request of her own free will and had not been subjected to any coercion by any person. Although counsel furnished her legal advice, this decision was her own. Additionally, she elected to submit a statement in her own behalf.

(1) Her submitted statement states, in effect, she received information that her husband was HIV positive, she believed she and her children could have been infected, she did not have anyone whom she could share her information with, she was unable to take leave to have herself and her children immediately checked out, this all "freaked her out". She tried to end her life multiple times.

(2) She was on prescribed medication, which made her incoherent to attend formation, she informed her command about her suicide attempts and these were unreported. She was not taken to the hospital for care. A psychiatrist from the mental ward, helped her get tested for HIV and referred her to someone who she could address and discuss her problems with, however she states it was too late for herself because her chain of command wanted her out of the army.

(3) She was notified her medical records were lost and states her Command used unlawful procedures to obtain new medical records. She went to the doctors, the chaplain, and the Inspector's General to find legal channels to salvage her career. This was to no avail.

(4) She states an encounter with her first sergeant, where she refers to a closed door conversation of harassment and yelling, and a racial slur being used, when this conversation was completed she went to the hospital because she was on the verge of a nervous breakdown.

(5) Her last encounter with her first sergeant, she states if she "breathed too hard" he would ensure she gets up to 10 years in federal prison. She was convinced it

was her first sergeant's intent to watch her hang at any expense. She departed out of sheer desperation.

(6) She joined the service because it was a colorless place and learned that even people who fight and defend America could be among the most biased of them all. She further stated her charge sheet dates were incorrect as she did not depart AWOL until 29 August 1995. She questioned that when she was hospitalized under psychiatric evaluation and dropped from rolls, her pay had stopped even though she was hospitalized for four to five days.

9. On 4 January 1996, the applicant's immediate commander recommended approval of the requested discharge and further recommended the applicant be separated with a UOTHC characterization of service.

10. The separation authority approved the applicant's request for discharge in lieu of trial by court-martial on 9 January 1996. He further directed the applicant be reduced to the lowest enlisted grade and furnished an UOTHC discharge.

11. The applicant was discharged on 5 February 1996, under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial. Her DD Form 214 confirms her character of service was UOTHC, with separation code KFS and reentry code 3. She was credited with 1 year, 6 months, and 9 days of net active service, with lost time from 12 June 1995 to 18 June 1995 and from 29 June 1995 to 17 December 1995.

12. The applicant and counsel additionally provide the following:

a. 6-page statement of facts (Exhibit 12), summarizing her Army experiences, describing traumatic instances of verbal, physical, mental, and emotional abuse she received and endured on numerous instances while serving, and references her mental breakdown and hospitalization as well as her diagnosis of PTSD and bipolar disorder.

b. Her VA rating decision (Exhibit 13), showing her psychosis was diagnosed within the required time frame and her entitlement to a service-connected treatment was established and received.

c. Her patient chart (Exhibit 14), with a printout date of 3 January 2023, showing medical diagnoses, medications, medical complaints, counseling's, referrals, and attended appointments by the applicant with a psychiatrist.

d. Certificates and awards (Exhibits 15 through 23) showing the applicant's success in the civilian world, additionally showing she is a Phi Theta Kappa honor society member, and a licensed Pastor of her church.

13. On 18 November 2009, the ADRB carefully examined the applicant's record of service, the Board determined that the discharge was both proper and equitable, and voted to deny relief.

14. On 26 January 2012 and 31 March 2015, the ABCMR considered the applicant's request for an upgrade of her characterization of service. The Board denied her requests, stating the evidence presented did not demonstrate the existence of a probable error or injustice. Her requests for relief were denied.

15. Discharges under the provisions of AR 635-200, Chapter 10, are voluntary requests for discharge for the good of the service from the Soldier to avoid a trial by court-martial. An UOTHC character of service is normally considered proper.

16. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

17. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting reconsidering of her request to upgrade of her characterization of service from under other than honorable conditions (UOTHC) to honorable. She contends she experienced mental health conditions including PTSD that mitigate her misconduct.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following: 1) After completing her service in the Army National Guard (ARNG), the applicant enlisted in the Regular Army on 31 January 1994; 2) Court-martial charges were preferred against the applicant on 20 December 1995, for being AWOL from 12-17 June 1995 and from 29 June-17 December 1995; 3) The applicant was discharged on 5 February 1996, Chapter 10, in lieu of trial by court-martial. Her character of service was UOTHC; 4) On 18 November 2009, the ADRB carefully examined and denied the applicant's request for an upgrade; 5) On 26 January 2012 and 31 March 2015, the ABCMR considered and denied the applicant's request for an upgrade of her characterization of service.

c. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service and medical records. The VA's Joint Legacy Viewer (JLV), hardcopy civilian and military medical documentation, and additional VA documentation provided by the applicant were also examined.

d. On her application, the applicant contends mental health conditions including PTSD were contributing and mitigating factors in the circumstances that resulted in her separation. There is sufficient evidence the applicant was experiencing mental health conditions and significant stressors while on active service. After returning from being

AWOL, the applicant was brought to a military emergency room on 10 February 1995. She had reported some concerning news regarding her ex-husband, and she described engaging in a previous suicide attempt/gesture along with binge drinking. She remained in inpatient psychiatric treatment for five days and was prescribed psychiatric medication. The applicant was recommended for follow-up therapy appointments, but she declined further medication. She was diagnosed with an Adjustment Disorder due to Conduct and Anxiety with Borderline Traits. In a letter to her Command, the applicant reported previous suicide attempts/gestures which did not appear to warrant medical care, but she stated she had alerted her leadership to her ongoing mental health condition and stressors.

e. After her discharge, there is evidence the applicant received psychiatric hospital and medical treatment starting in April 1996, and the VA provided health care support to the applicant due to her diagnosis of psychosis, which occurred close to her discharge. A review of JLV provided evidence the applicant has been provided treatment for Bipolar Disorder since 2005 and Alcohol Abuse. She also provided additional information from a civilian provider that her diagnosis of Bipolar Disorder has been confirmed by another provider in 2021. In 2024, the applicant was also diagnosed with PTSD in 2024 by the VA due to her report of military sexual trauma. The applicant has not been provided any service-connected disability.

f. Based on the available information, it is the opinion of the Agency BH Advisor that there is sufficient evidence to support the applicant had condition or experience that may have mitigated her misconduct.

#### Kurta Questions:

(1) Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge? Yes. The applicant did have evidence of experiencing a stressor and mental health symptoms prior to her misconduct of going AWOL. She was later diagnosed with Bipolar Disorder and PTSD, which was likely present during her military service.

(2) Did the condition exist, or experience occur during military service? Yes. The applicant did have evidence of experiencing a stressor and reported mental health symptoms prior to her misconduct of going AWOL. She was later diagnosed with Bipolar Disorder and PTSD, which was likely present during her military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. There was sufficient evidence the applicant had been experiencing a stressor prior to going AWOL the second time, and she was experiencing mental health symptoms at that time. In addition, she was later consistently diagnosed with Bipolar Disorder, which was likely present during her military service and impacted her ability to handle stress

and make rational decisions. Lastly, she has reported experiencing military sexual trauma and been diagnosed with PTSD by the VA related to these experiences. Individuals exposed to sexual trauma and resultant PTSD often engage in avoidant behavior like going AWOL. This type of misconduct is a natural

#### BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition, available military records and the medical review, the Board considered the advising official finding sufficient evidence to support the applicant had condition or experience that may have mitigated her misconduct. The Board noted the opine review of evidence the applicant received psychiatric hospital and medical treatment starting in April 1996, and the VA provided health care support to the applicant due to her diagnosis of psychosis, which occurred close to her discharge.
2. The Board carefully considered the applicant's contentions; however, the Board found the applicant's contentions were not consistent with her timeline as it related to the sequence of events. The Board determined there is insufficient evidence of mitigating factors to overcome the misconduct of multiple AWOLs. The Board found the applicant's numerous post service achievements commendable. Furthermore, evidence of record shows, at the time of separation, documentation supports the narrative reason for separation properly identified on the applicant's DD Form 214. The Board found the applicant request Chapter 10 separation and there was insufficient evidence of an error or injustice which would warrant a discharge upgrade.
3. However, during deliberation the Board noted the applicant completed a period of initial active duty for training (IADT). She was awarded a MOS at the completion of training and was transferred back to the ARNG. Army Regulation 635-200 provides that when a ARNG Soldier successfully completes IADT, the characterization of service is Honorable unless directed otherwise by the separation authority. Correction is warranted on DD Form 214 for the period ending 29 January 1992 showing her character of service as Honorable. Therefore, the Board granted partial relief.



BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:            :            :            GRANT FULL RELIEF

█           █           █           GRANT PARTIAL RELIEF

:            :            :            GRANT FORMAL HEARING

:            :            :            DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by re-issuing the applicant a DD Form 214 for the period ending 29 January 1992 showing her character of service as Honorable.

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to an upgrade of his characterization of service from under other than honorable conditions (UOTHC) to honorable nor a change of narrative reason for separation to an appropriate less derogatory reason, such as Secretarial Authority

3/25/2024

X █

CHAIRPERSON

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I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

ADMINISTRATIVE NOTE(S): N/A

REFERENCES:

1. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.
2. AR 635-5-1 (Separation Program Designator (SPD) Codes) states that separation codes are three-character alphabetic combinations that identify reasons for and types of separation from active duty. Separation codes and corresponding narrative reasons are aligned with applicable regulatory authority paragraphs. The regulation provides that the separation code "KFS" is the appropriate code to assign Soldiers separated under the provisions of Army Regulation 635-200, by narrative reason of "in lieu of trial by court-martial."
3. Army Regulation 635-200, in effect at the time, provided guidance for the administrative separation of enlisted personnel:
  - a. Chapter 10 of this regulation provided a member who has committed an offense or offenses, the punishment for which, under the UCMJ and the Manual for Courts-Martial, includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the Service. The discharge request may be submitted after court-martial charges are preferred against the member, or, until final action on the case by the court-martial convening authority. A member who is-under a suspended sentence of a punitive discharge may also submit a request for discharge for the good of the Service. An UOTHC discharge certificate normally is appropriate for a member who is discharged for the good of the Service. However, the separation authority may direct a general discharge certificate if such is merited by the member's overall record during the current enlistment.
  - b. An honorable discharge is a separation with honor. The issuance of an honorable discharge certificate is predicated upon proper military behavior and proficient performance of duty during the member's current enlistment or period of obligated service with due consideration for the member's age, length of service, grade, and general aptitude. Where a member has served faithfully and performed to the best of his

ability, and there is no derogatory information in his military record, he should be furnished an honorable discharge certificate.

c. An under honorable conditions (general), discharge is a separation from the Army under honorable conditions. It is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

d. An UOTHC discharge is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct and the good of the service.

e. Chapter 15 (Secretarial Plenary Authority) states Secretarial plenary separation authority is exercised sparingly and used when no other provision of this regulation applies. Separation under this chapter is limited to cases where the early separation of a Soldier is clearly in the best interest of the Army. Separations under this chapter are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memoranda. Separation under this chapter may be voluntary or involuntary. Separations under this authority will be characterized as honorable or (general) under honorable conditions.

4. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including post-traumatic stress disorder; traumatic brain injury; sexual assault; or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on those conditions or experiences.

5. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and BCM/NRs regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards

shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

//NOTHING FOLLOWS//